

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LOUIS AGRE, et al. v. THOMAS W. WOLF , Governor of Pennsylvania, ROBERT TORRES ¹ , Acting Secretary of State of Pennsylvania, JONATHAN MARKS , Commissioner of the Bureau of Elections – in their official capacities.	CIVIL ACTION NO. 17-4392
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**ORDER REGARDING LEGISLATIVE DEFENDANT TURZAI'S MOTION FOR A
PROTECTIVE ORDER TO PROCEED WITH HIS DEPOSITION UNDER SEAL**

BEFORE: Smith, Chief Circuit Judge; Shwartz, Circuit Judge; Baylson, District Judge:

Legislative Defendant Michael C. Turzai has moved to have his deposition taken and maintained under seal based in part on his view that the Amended Complaint will be dismissed. The fact that a motion to dismiss is pending does not prevent discovery from proceeding in accordance with the Federal Rules of Civil Procedure. Moreover, because the Court has already concluded that the Elections Clause claim has survived the motion to dismiss, this claim will proceed to trial and the parties may conduct discovery concerning that claim, including taking depositions. The subjects that are likely to be inquired about during the deposition will likely be the subject of the testimony that will be adduced during the public trial commencing December 4, 2017 concerning the acts of public officials and entities. There is no known basis that would support allowing such trial testimony to be presented under seal. As a result, there is no basis for sealing deposition testimony concerning the same topic. The movant's concern that a party may attempt to use the deposition in another proceeding does not provide good cause to seal the deposition as there is no clearly defined harm by allowing the deposition to proceed. Applications concerning the use of the deposition in such other proceedings can be presented to

¹ As of October 11, 2017, Robert Torres is the Acting Secretary of the Commonwealth of Pennsylvania and is hereby substituted as a defendant. *See* Fed. R. Civ. P. 25(d).

those tribunals. For these reasons, the movant has not provided good cause, Fed. R. Civ. P. 26(c), for the entry of the requested protective order.

IT IS THEREFORE NOW this 28th day of November, 2017, **ORDERED** that the motion for a protective order to allow the deposition of Legislative Defendant Michael Turzai to be sealed [ECF 129] is denied. However, to enable the parties to focus on completing discovery and preparing for trial, all depositions and any exhibits used at any deposition, may only be disclosed to counsel, their agents (such as paralegals and other assistants), their clients, and experts until trial begins.

BY THE COURT:

s/Patty Shwartz
PATTY SHWARTZ
United States Circuit Judge

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